

REMARKS

In the Office Action mailed December 29, 2006, the Examiner rejected claims 83-86, 88-93 and 95-105. By way of the foregoing, Applicants have added claims 106 and 107. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

I. Rejections under 35 USC 112

The Office Action rejected claim 101 suggesting that the claims can be read in a manner inconsistent with Applicant's intent. In particular, the Office Action suggests that, according to the Examiner's interpretation, the claim can be read to require three openings. However, the claim recites the following openings: at least one opening for receiving an instrument or gauge; a circular opening; and plural rectangular openings. Applicants contend that this recitation is clear and that the Examiner's interpretation of the claim is incorrect.

II. Rejections under 35 USC 103

The Office Action rejected claims 83-86, 88-93 and 95-105 as being obvious under 35 USC 103 and unpatentable over Delmastro (6,354,623) in view of one or more of the following references: Kelman et al. (5,364,159); Brannon (5,443,775); and Speelman et al. (US 2002/0153741). Applicants traverse these rejections base upon the previous arguments presented for the present application. Additionally, Applicants traverse these rejections on multiple grounds discussed in detail below.

The Law

As stated in the MPEP 2143.03, "To establish prima facie obviousness...all the claim limitations must be taught or suggested by the prior art." In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Moreover, the MPEP states that, "All words in a

claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The Court of Appeals for the Federal Circuit, in the case of *In re Lee*, 61 USPQ2d 1430 (CAFC 2002), wrote:

The factual inquiry whether to combine references must be thorough and searching." *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting *C.R. Bard, Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.");...

The need for specificity pervades this authority. See, e.g., *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious."); *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992) (the examiner can satisfy the burden of showing obviousness of the combination "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references").

Delmastro and Kelman et al.

In rejecting claims 84-86, 88, 89, 91-95, 97-100, 104 and 105, the Office Actions suggests that:

It would have been obvious ... to form each tongue and groove mechanical interlock of Delmastro as a single flange on the first panel and a pair of spaced apart flanges of the second panel that are somewhat parallel to the flange on the first panel to securely connect the first and second panels, as taught by Kelman et al. in a substantially air tight manner ...

Applicants contend that the motivation cited for combining Kelman et al. with Delmastro is improper since it is not sufficiently specific and does not consider the invention of the present application as a whole. The Office Action asserts that Delmastro discloses panels formed of different materials¹ and then, as recited above, suggests that it would have been obvious to use the attachments of Kelman et al. for the panels of Delmastro. However, there is no suggestion in the prior art or the knowledge of the skilled artisan to show why the skilled artisan would be motivated to use attachments of Kelman et al. to connect panels that are formed of different materials. This is particularly the case when the parts of Kelman et al., which are identified by the Office Action as panels, are specifically recited in Kelman et al. to be formed of the same material (see col. 5, lines 20-26 of Kelman et al.). This is also particularly the case when Delmastro itself identifies its preferred method of attachment as being vibration or ultrasonic welding as opposed to the complex flange configuration identified by the Office Action as being disclosed in Kelman et al. Applicants contend that without such a suggestion, there is no particular motivation for the combination of Kelman et al. with Delmastro particularly when considering the invention of claims 84-86, 88, 89, 91-95, 97-100, 104 and 105. Based on the above, Applicants request that the rejections of these claims be withdrawn.

¹ Applicants do not acquiesce in this suggestion and particularly do not acquiesce in the suggestion that Delmastro discloses the particular combinations of materials recited in the claims of the present application.

Claim 91

The Office Action suggests that the first plastic material of Delmastro, “may include PC/ABS material, as disclosed on lines 44-45 of column 2.” Applicants review of lines 44-45 of column 2 suggest that Delmastro does not specifically contemplate PC/ABS material. As such, Applicants contend that the Office Action fails to establish a prima facie case of obviousness of the claims of the present application by Delmastro. Applicants request that the rejection of claims 91 and its dependents be withdrawn.

The Office Action suggests that the second plastic material of Delmastro, “may include ... polypropylene, in reference to claim 91...” However, Delmastro, in its discussion of a “different material” at col. 2, lines 47-58 does not appear to specifically contemplate PC/ABS or Polypropylene as candidates for the “different material”. As such, Applicants contend that the Office Action fails to establish a prima facie case of obviousness of claim 91 of the present application by Delmastro. Applicants request that the rejections of claim 91 and its dependents be withdrawn.

Moreover, it is unlikely that the skilled artisan would choose PC/ABS for one of the materials and polypropylene for the other in view of Delmastro since the preferred joining method discussed in Delmastro is welding and welding of incompatible materials such as PC/ABS and polypropylene is likely to be very difficult. Moreover, such difficulty can make manufacture of an instrument panel assembly based upon the Delmastro particularly undesirable for mass production.

Based upon the above, Applicants respectfully request that the rejection of claims 91 and its dependents be withdrawn.

Brannon

The Office Action suggests that it “would have been obvious ... to form the show surface of Delmastro, as modified, of a molded-in-color polyolefin material, as taught by Brannon, to improve the aesthetics of the instrument panel assembly.” Applicants contend that this suggestion by the Office Action does not provide a sufficient motivation to combine Brannon with Delmastro. In particular, there is no indication in the prior art or

the knowledge of the skilled artisan that the process of Brannon is suitable for use in an instrument panel much less the particular instrument panel of Delmastro. Moreover, the process of Brannon is directed to processing of thermosetting plastics that have a tendency to undergo significant shrinkage and, even more particularly, to SMC body panels of automotive vehicles (see col. 1, lines 34-53). It is quite unlikely that the skilled artisan would look to the process of Brannon to improve upon the instrument panel assembly of Delmastro. Based on the above, Applicants respectfully request that any of the rejections based upon the combination of Brannon with Delmastro be withdrawn.

Claim 101

In rejecting claim 101, the Office Action reads that, "Official Notice is being taken that materials that consist essentially of PC/ABS are well-known in the art with known properties as are materials that consist essentially of polypropylene." The Office Action then goes on to suggest that it would have been obvious to use those materials "to provide desired strength and weight". Applicants contend that this motivation is insufficient to maintain obviousness rejections against claim 101 and its dependents. In particular, the Office Action has not shown where in the prior art or the knowledge of the skilled artisan that the stated motivation exists. Moreover, taking official notice of the materials and suggesting that the strength and weight of the materials is appropriate cannot be a sufficient motivation since the same motivation could be provided in nearly any situation that a particular material is recited and the motivation provides no specificity and is based upon impermissible hindsight. Further, the motivation does not provide any particular motivation for the particular combination of materials and, therefore, does not view claim 101 of the present invention as a whole. Based on the above, Applicants respectfully request that the rejections of claim 101 and its dependents be withdrawn.

Furthermore, Applicant points out that it would likely be improper to present a final rejection of claims 83-86, 88-93 and 95-105 on a grounds alternative to that

already presented since applicants have not amended those claims in a manner, which would necessitate such alternative grounds. In particular, the MPEP reads:

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." MPEP 706.07(a)

Thus, any new grounds of rejection, "that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee..." would be improper.

III. New Claims

Applicants have added new claims 106-107 and contend that the subject matter of these claims is neither taught or suggested by the references of record for the present application.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants intend to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.,

62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

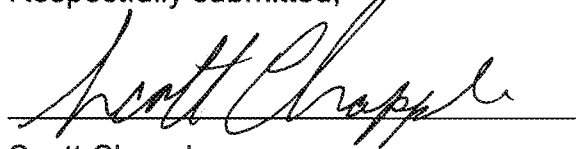
CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 04-1512 for any fee which may be due.

Dated: 5 March, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Chapple", is written over a horizontal line.

Scott Chapple
Registration No. 46,287
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street
Suite 210
Pontiac, MI 48342
(248) 292-2920

Customer No. 25215